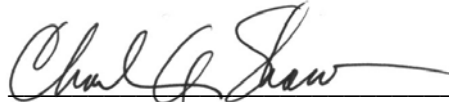


The Court concludes that Imagine’s proposed appeal does not present a controlling question of law as to which there is substantial ground for difference of opinion within the meaning of the statute. Imagine argues that plaintiffs could not have mistaken the proper party’s identity, because plaintiffs correctly named Imagine and Ethel Hedgeman Lyle Academy as respondents in their amended charge of discrimination filed with the EEOC. Imagine also argues that plaintiffs’ EEOC

Notice of Right to Sue identified Imagine as a respondent. Imagine's argument, much like its original motion to dismiss, incorrectly focuses on plaintiffs' knowledge and conduct, and not what Imagine knew or should have known. This is not the proper inquiry under controlling Supreme Court precedent. See Krupski v. Costa Crociere, S.p.A., 130 S. Ct. 2485 (2010). The proper inquiry is not whether plaintiffs knew or should have known the identity of Imagine as the proper defendant, but whether Imagine knew or should have known that it would have been named as a defendant but for an error. Id. at 2493. "Rule 15(c)(1)(C)(ii) asks what the prospective *defendant* knew or should have known during the Rule 4(m) period, not what the *plaintiff* knew or should have known at the time of filing her original complaint." Id. (emphasis in original). Imagine's motion for certification under 28 U.S.C. § 1292(b) will be denied.

Accordingly,

**IT IS HEREBY ORDERED** that defendant Imagine Schools' motion for certification under 28 U.S.C. § 1292(b) is **DENIED**. [Doc. 102]

  
**CHARLES A. SHAW**  
**UNITED STATES DISTRICT JUDGE**

Dated this 16th day of November, 2010.